

REMARKS

In the Decision on Appeal dated August 8, 2008, the Board reversed the Examiner's rejection of claims 7-16, 40, and 43-45. In view of this decision, independent claims 7 and 40, and their respective dependent claims 8 and 43-46, are believed to be in condition for allowance.

The Board also raised a new ground of rejection against claims 1-6, and 9-21 under 35 U.S.C. § 112, ¶ 1. With respect to claim 1, the language at issue is "[a] test system comprising ... an emulation module" The Board stated that the Specification does not recite a test system that includes such an emulation module. 8/8/2008 Decision on Appeal at 13.

In view of the reversal of the final rejection of claim 9 made by the Board, we have amended claim 9 into independent form (by incorporating the subject matter of claim 1, now cancelled, into claim 9). We have also amended the language of claim 9 to clarify that the claimed subject matter is in fact supported by the Specification. The term "emulation module" has been replaced with "optimizer module." Claim 9 now recites a test system that comprises an optimizer module to receive environment information of a database system separate from the test system, with the optimizer module to use the environment information to emulate an environment of the database system based on the environment information. Support for this language can be found at least on page 7, lines 4-6, of the Specification. In view of the replacement of "emulation module" with "optimizer module," the language of claim 9 has further been amended to replace "second module" with "analysis module." One example of such an "analysis module" that is adapted to apply a genetic algorithm, as recited in claim 9, is the index search engine 319, which uses a genetic algorithm, as explained on page 28, at lines 14-17, of the Specification.

In view of the amendment made to claim 9, it is believed that the § 112, ¶ 1 rejection has been overcome. Some claims formerly dependent upon claim 1 now depend from claim 9. It is therefore respectfully submitted that claim 9, and its dependent claims, are now in condition for allowance.

In view of the foregoing, it is believed that all claims are in condition for allowance, which action is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 50-4370 (10150).

Respectfully submitted,

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